

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE [REDACTED] Office: NEW YORK, NEW YORK

Date:

APR 29 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:
SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

The applicant was born in India on August 16, 1985. The record indicates that the applicant's father, [REDACTED] was born in Tamil Badu, India on September 7, 1949, and that he became a naturalized United States (U.S.) citizen on August 26, 1986. The record indicates further that the applicant's mother [REDACTED] was born in Tamil Nadu, India on November 2, 1955. She became a naturalized U.S. citizen on June 21, 1996. The applicant was adopted by her parents in Nagpur India, on July 29, 1989, and she was lawfully admitted for permanent residence in the United States on August 19, 1989. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant failed to establish that she is residing in the physical custody of her U.S. citizen parents. Her application was denied accordingly.

In support of his decision, the district director stated the following:

As of the date of adjudication [January 14, 2002], your child, [REDACTED] is not physically residing with you, the United States citizen parents. The child is currently residing with her grandparents at the following address, [REDACTED]

Therefore, the child became statutorily ineligible when [she] stopped residing in the physical custody of [her] United States citizen parents, in the United States. The N600 application filed is denied as a matter of law.

See District Director Decision, dated January 14, 2002.

On appeal, the applicant, through her father, states that she is presently residing in the U.S. and that she is enrolled as a full-time student at Roslyn High School in New York. The applicant submitted a copy of a school registration slip, dated January 28, 2002, as evidence of her enrollment in the school. No other information or evidence was provided by the applicant.

Sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all

persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 15 years old on February 27, 2001. She is therefore eligible for the benefits of the CCA.

Section 320 of the Act, as amended by the CCA, states that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1) of the Act states, in pertinent part, that:

- (1) The term "child" means an unmarried person under twenty-one years of age who is -

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(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years

See section 101(b)(1)(E)(I) of the Act; 8 U.S.C. § 1101(b)(1)(E)(1).

The Board of Immigration Appeals (BIA) decision, *In re Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) clarified the effective date for implementation of the automatic citizenship provisions under section 320 of the Act:

The amendments made by this title shall take effect 120 days after the date of the enactment of this Act, and shall apply to individuals who

satisfy the requirements of section 320 or 322 of the Immigration and Nationality Act, as in effect on such effective date.

See Rodriguez-Tejedor at 157.

On February 26, 2001, the Immigration and Naturalization (now known as the Bureau of Citizenship and Immigration Services) issued a Service-wide memorandum providing instructions for the adjudication of applications for certificates of citizenship pursuant to amendments made by the CCA. See (HQISD 70/33), *Implementation Instructions for Title I of the Child Citizenship Act of 2000, Public Law 106-395 (CCA)*, by [REDACTED] Deputy Executive Associate Commissioner, Office of Field Operations (Service Memo). The Service Memo states that:

For children admitted as lawful permanent residents prior to February 27, 2001, the Service will presume that the U.S. citizen parent had legal custody, if the child is still living with and in the physical custody of the citizen parent on February 27, 2001.

See Service Memo at 7.

As indicated above, the record reflects that on February 27, 2001, the applicant was 15 years old and both of her adoptive parents were naturalized U.S. citizens. She has thus met two of the three requirements for establishing automatic citizenship under section 320 of the Act. However, the record does not contain sufficient information to determine whether the applicant satisfied the third requirement under section 320 of the Act.

The unresolved issues presented in this case are 1) whether for section 320 physical and legal custody purposes, the applicant resided in the physical custody of her citizen parent(s) on February 27, 2001, and 2) whether, for section 101(b)(1)(E) purposes, the applicant resided with her adoptive parents for at least two years prior to February 27, 2001.

If the applicant is able to prove that on February 27, 2001, she was in the physical and legal custody of her parents, as defined by the Act, she will have acquired automatic citizenship as of February 27, 2001 and no further adjudication will be necessary.

The district director's decision erroneously applied residence requirements to the applicant as of the date that the applicant had her naturalization adjudication interview (January 14, 2002). The decision, thus did not address or discuss whether the applicant met the conditions of

automatic citizenship pursuant to section 320 of the Act on February 27, 2001. Because the evidence in the record does not contain documentation or discussion regarding the applicant's physical residence with her parents prior to and on February 27, 2001, the case will be remanded to the district director for action in accordance with this decision.

ORDER: The case will be remanded.